

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
SOUTHEASTERN DIVISION**

RONNIE ALLEN,

Plaintiff,

v.

JOHN MILLS, et al.,

Defendants.

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No. 1:16-cv-26-SNLJ

MEMORANDUM AND ORDER

This matter is before the Court for review pursuant to Rule 4(m) of the Federal Rules of Civil Procedure. This action will be dismissed, without prejudice, as to defendant John Mills, pursuant to Rule 4(m) of the Federal Rules of Civil Procedure.

Plaintiff commenced this action in this Court on February 8, 2016 and filed an amended complaint on August 8, 2016. In both, plaintiff named Mills as a defendant. On November 9, 2016, the Court directed the Clerk of Court to serve process upon the amended complaint. Because plaintiff averred that Mills was a corrections officer employed by the Missouri Department of Corrections, service was first attempted via the Missouri Attorney General's Office. However, counsel therefor declined to waive service, stating that Mills was no longer employed by the Missouri Department of Corrections. The Court subsequently directed counsel to provide Mills's last known address for the purpose of effectuating service. Counsel timely responded, and the Court directed the Clerk of Court to effectuate service via the United States Marshal at the address provided. On January 18, 2017, service was returned unexecuted.

On January 26, 2017, this Court issued an order informing plaintiff that more than 90 days had elapsed since the filing of the amended complaint, and Mills had not been served with process. Plaintiff was directed to provide adequate information to allow Mills to be served, or

advise the Court of good cause for his inability to do so. *See* Fed. R. Civ. P. 4(m) (requiring the court to dismiss an action without prejudice or order that service be made within a specified time if a defendant has not been served within 90 days after the filing of the complaint). Plaintiff was cautioned that his failure to timely respond would result in the dismissal of Mills from this action. Plaintiff's response to the Court was due on February 16, 2017. To date, he has neither responded to the Court's order, nor sought additional time to do so.


Rule 4(m) requires this Court to dismiss an action without prejudice if the amended complaint is not served within 90 days of its filing. Fed. R. Civ. P. 4(m). More than 90 days have passed since plaintiff filed the amended complaint and, notwithstanding the reasonable efforts to locate Mills, he cannot be found, and summonses have been returned unexecuted. In addition, plaintiff has chosen to not avail himself of the opportunity the Court provided to either supply information necessary to effectuate service of process, or to advise of good cause for his inability to do so. Based on the circumstances of this case, extension would be futile. The Court will therefore dismiss this action, without prejudice, as to defendant John Mills, pursuant to Rule 4(m) of the Federal Rules of Civil Procedure.

Accordingly,

IT IS HEREBY ORDERED that this action is dismissed, without prejudice, as to defendant John Mills. A separate order of partial dismissal will be entered herewith.

IT IS HEREBY CERTIFIED that an appeal from this partial dismissal would not be taken in good faith.

Dated this 27th day of February, 2017.



STEPHEN N. LIMBAUGH, JR.
UNITED STATES DISTRICT JUDGE